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FEB 18 1946

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 863

EVANS D. GARDNER,

Petitioner,

VS.

CAPITAL TRANSIT COMPANY, a corporation,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA AND BRIEF IN SUP-
PORT THEREOF.**

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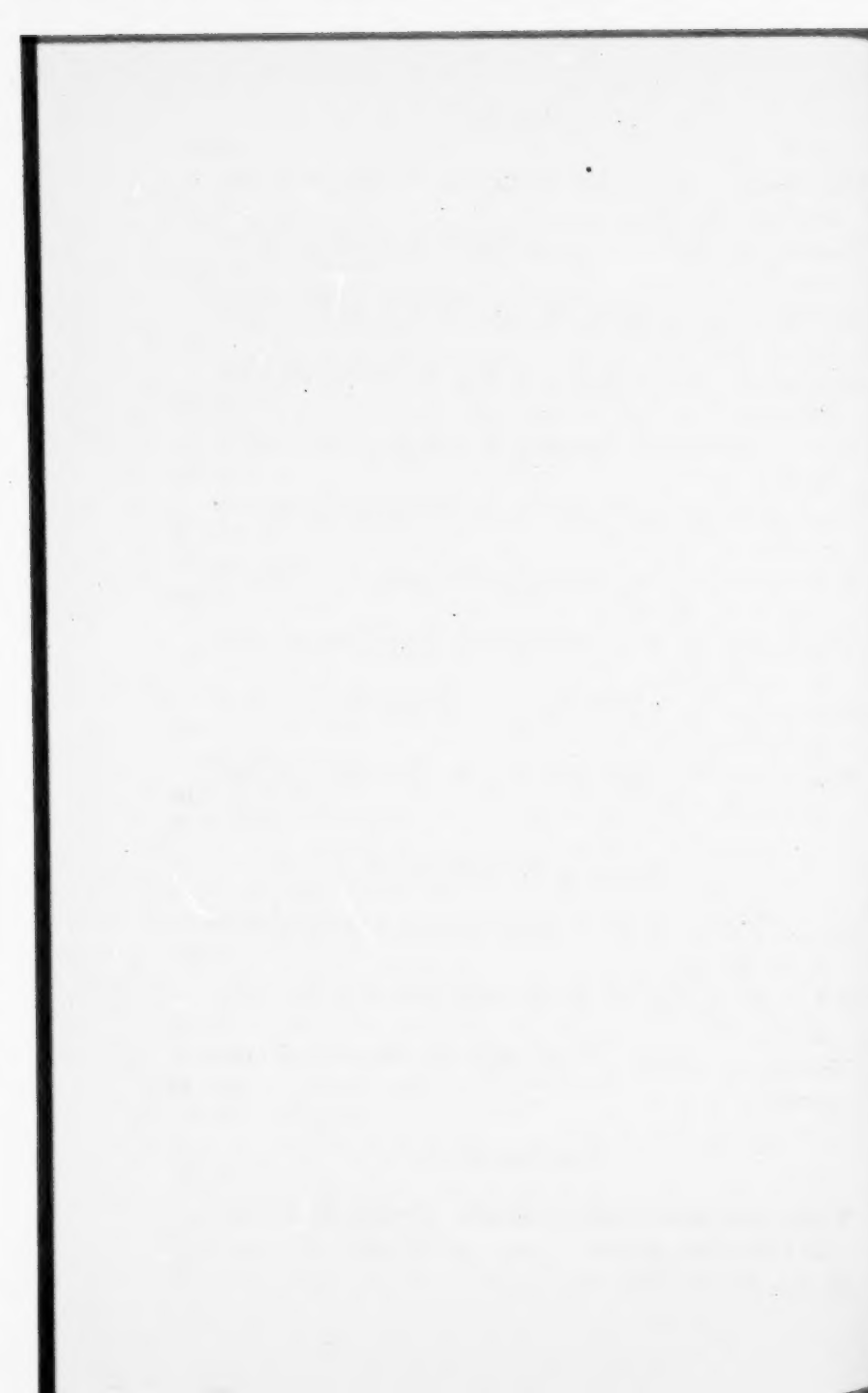
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No.

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**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA.**

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Evans D. Gardner, (hereinafter sometimes called the plaintiff) prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered on December 17th, 1945, which affirmed the verdict of a Jury in the District Court of the United States for the District of Columbia, in favor of the respondent (hereinafter sometimes called the defendant) and against petitioner (R. 97).

Statement of the Matter Involved.

This is an action by the plaintiff, Evans D. Gardner, against the defendant, Capital Transit Company, brought to recover damages for personal injuries sustained by the plaintiff as the result of a collision between the plaintiff's automobile and a street car of the Capital Transit Company.

The accident occurred on Kenilworth Avenue, Northeast, in the District of Columbia, on August 22nd, 1943, at about 9:00 P. M., at or about in front of premises 1124 Kenilworth Avenue, at which time it was admittedly dark. On this part of Kenilworth Avenue there is a single street car track located in the center of the street. Street cars are operated in both directions on this single track (R. 5). They travel to the end of the line on this single track, then switch around, and return to the City on the same track (R. 54). This single track was approximately two miles in length (R. 54). At the time of the accident the plaintiff was traveling in a southerly direction or toward the City while the street car was traveling in a northerly direction or toward the end of the line which was approximately one mile distant (R. 18).

The plaintiff was operating his automobile along Kenilworth Avenue with the left front wheel slightly over the west rail of the street car track, at a speed of approximately 20 miles per hour. He saw a street car ahead of him at a distance of approximately 150 feet with no lights whatever. When he first saw the street car he thought it was the rear end and was traveling in the same direction that he was. When the street car was approximately 100 feet in front of plaintiff's automobile he realized that it was coming toward him and immediately swerved to the right to avoid being struck by the street car but he was

unable to get off of the track to avoid the collision. The automobile was struck on the left side and was heavily damaged. The plaintiff sustained a serious injury to his left arm. The street car was being operated at an excessive speed, without front headlights, and it did not slow down before the impact. The automobile came to an immediate stop in the roadway near the point of impact and close to the street car tracks. The street car traveled a distance of over 100 yards or over a city block beyond the point of collision before it came to a stop (R. 19).

Jurisdictional Statement.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended, 28 U. S. C. 347 (a). The judgment of the United States Court of Appeals for the District of Columbia, of which review is sought, was entered on December 17, 1945.

Questions Presented.

1. It was error not to instruct the Jury on the respective Rights of Way of a street car and an automobile as requested by the plaintiff.

2. The Court of Appeals erred in holding that Municipal Ordinances may not be Judicially Noticed by Courts of General Jurisdiction.

- A. All Courts take Judicial Notice of the particular laws of the Forum or the subjects placed by law under its cognizance.
- B. All Federal Courts take Judicial Notice of Acts of Congress.
- C. The United States Constitution, Art 1, Sec. 8, Par. 17, authorizes Congress to exercise exclusive legislation in all cases within the District of Columbia.
- D. The Commissioners of the District of Columbia have no power to enact Municipal Ordinances.

3. A motorman in the operation of a street car is under a duty to exercise reasonable care and diligence. This requires a diligent lookout ahead, timely warning of the approach of the street car, and to have the car under ready control. The Trial Court erred in not so instructing the Jury.

Reasons for Allowance of Writ.

The petitioner submits the following reasons for the allowance of a Writ of Certiorari to review the judgment of the United States Court of Appeals for the District of Columbia:

1. The United States Court of Appeals for the District of Columbia has decided a question of general importance in conflict with the decisions of that Court and without giving proper effect to applicable decisions of the United States Supreme Court.

2. The United States Court of Appeals for the District of Columbia has decided this case without giving effect to Art. 1, Sec. 8, Par. 17, of the Constitution of the United States.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari issue to the United States Court of Appeals for the District of Columbia, and submits his brief herewith in support of this petition.

Respectfully submitted,

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